

TAB M

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CYCLE-CRAFT CO., INC. d/b/a
BOSTON HARLEY-DAVIDSON/BUELL,

Plaintiff,

vs.

Civil Action
No. 04 11402

HARLEY-DAVIDSON MOTOR COMPANY,
INC., and BUELL DISTRIBUTION
COMPANY, LLC,

Defendants.

_____/

300 SE 2nd Street
Fort Lauderdale, Florida
February 2, 2005
1:00 p.m.

THE VIDEOTAPED DEPOSITION OF

DEBRA LUNSFORD

Taken on Behalf of the Defendants
Pursuant to Notice of Taking Deposition
Commencing at 1:12 p.m.

ORIGINAL

1 understand what you're saying.

13:23:45 2 Q. I'll put a different question --

13:23:48 3 MR. REHNQUIST: Ignore my objection.

4 That's just part of the lawyer talk for the
5 record. So when I object, you can just keep
6 listening. And if your lawyer tells you not to
7 answer, that's a different thing.

13:23:55 8 THE WITNESS: Okey-dokey.

13:23:56 9 BY MR. BERKOWITZ

13:23:56 10 Q. In other words, it doesn't mean that you
11 don't answer the question. It's for the record.

13:24:00 12 A. Okay.

13:24:00 13 Q. Let me try again. As I understand it,
14 both of the companies would import motor vehicles
15 into the United States, is that correct?

13:24:06 16 A. That's correct.

13:24:06 17 Q. Okay. What did the companies do with them
18 once they got to the United States and they were
19 made compliant for US standards?

13:24:12 20 A. Okay. If -- if they were individual
21 bikes -- we did it for individuals as well, okay,
22 for military people. So they would, of course, come
23 get their motorcycle and do the appropriate type of
24 work so it would be legal in the United States.

13:24:26 25 The -- the motorcycles that we got in in

1 bulk, those motorcycles would be resold. We would
2 have -- people would buy those motorcycles. But it
3 was all -- we never did individual. It was all
4 dealer to dealer.

13:24:50 5 Q. In other words, your customers were
6 dealers, is that correct?

13:24:53 7 A. Right. Like your mom and pops, you know,
8 the majority of them were your mom and pops.

13:24:58 9 Q. Okay. As distinguished from individual
10 customers, is that right?

13:25:02 11 A. Right. We didn't sell individual.

13:25:04 12 Q. You didn't -- you didn't operate a retail
13 business, in other words?

13:25:07 14 A. No.

13:25:08 15 Q. And I assume you didn't advertise for
16 general consumer consumption?

13:25:12 17 A. Absolutely not.

13:25:13 18 Q. All right.

13:25:13 19 A. We had no showroom. We had --

13:25:23 20 Q. I'm going to ask you questions about DCI
21 now, and when I refer to DCI, I'm referring to the
22 entity that you were employed by, DC Imports
23 International; do you understand?

13:25:33 24 A. Yes.

13:25:34 25 Q. Okay. How did DCI obtain customers; how

1 narrative.

13:38:43 2 BY MR. BERKOWITZ

13:38:43 3 Q. Go ahead.

13:38:44 4 A. We wanted to do the deal to get the 19
5 motorcycles dealer-to-dealer. They tried to --

13:38:53 6 Q. Okay. Let me -- let me cut you off there.

13:38:54 7 A. Okay.

13:38:54 8 Q. Did you get involved directly and start
9 dealing with Boston Harley at this point?

13:38:58 10 A. Yes.

13:38:59 11 Q. Okay. What -- who did you talk to?

13:39:00 12 A. Ron Buchbaum.

13:39:02 13 Q. By phone, I assume?

13:39:03 14 A. Yes. And Sean -- I can't recall his last
15 name. Sean.

13:39:09 16 Q. If I were to suggest to you that it was
17 Walsh, does that ring a bell?

13:39:14 18 A. Yes, that's it. Sean Walsh.

13:39:16 19 Q. Okay. You talked to them both at the same
20 time or multiple times?

13:39:18 21 A. Not at the same time. Not at the -- not
22 on like a three-way conversation, not at the same
23 time, but I spoke to both of them on different
24 occasions.

13:39:26 25 Q. Okay. I'm going to ask you about the

1 first time that you talked with anybody at Boston
2 Harley; was that with Mr. Buchbaum?

13:39:34 3 A. No. It was with Sean.

13:39:35 4 Q. Okay. And tell me what your conversation
5 was.

13:39:37 6 A. Sean didn't understand and nor did I why
7 we had to do it in 19 individual names, but Ron
8 insisted it be done that way because Ron insisted
9 that we have 19 different cashier checks in
10 individual names, and that was going to be a
11 difficult thing to do; why couldn't we just give it
12 one lump sum and let them divide the money on how
13 they want to do it because it was coming from the
14 same source?

13:40:07 15 Q. Okay. The first time that you heard that
16 Ron wanted to do it through 19 individual buyers,
17 did -- did you learn that from Slim and Gus or from
18 Sean?

13:40:17 19 A. Slim and Gus.

13:40:18 20 Q. Okay.

13:40:19 21 A. And then I got involved after that and
22 talked to Sean, and Sean didn't want to do it that
23 way either. He wanted just to do -- because it was
24 more of a issue for him as far as paperwork goes, I
25 guess. I don't know.

13:40:31 1 Q. All right. So in your first conversation
2 when you spoke to Sean, did you tell him that you
3 didn't want to do it that way?

13:40:37 4 A. Yes.

13:40:37 5 Q. And tell us what you told Sean.

13:40:39 6 A. I told Sean that it was going to be like
7 jumping through hoops to do it that way, and it was
8 dealer-to-dealer and why should we have to pay, you
9 know, tax on it when it's not individuals, it's
10 dealer-to-dealer.

13:40:53 11 Q. Tell us what you mean by
12 "dealer-to-dealer."

13:40:56 13 A. In other words, it's one -- we were -- at
14 that time when we had our retail license, we had to
15 get a dealer's license, so it was dealer-to-dealer.
16 That way you don't pay your sales tax when you do a
17 dealer-to-dealer. It's more like a wholesale deal.

13:41:12 18 Q. All right.

13:41:13 19 A. Am I --

13:41:14 20 Q. And -- and what was Sean's reaction when
21 you said that you didn't want to do it that way?

13:41:19 22 A. He said that under no circumstances, that
23 Ron wouldn't go for it, that Ron told him that it
24 had to be done in 19 different names.

13:41:26 25 Q. Okay. Now, as of this point in time, you

1 hadn't spoken with Ron, is that correct?

13:41:31 2 A. That's correct.

13:41:32 3 Q. All right. What else was said in this
4 conversation that you can remember between you and
5 Sean?

13:41:39 6 A. That's about it.

13:41:40 7 Q. How did you leave it with him; was he
8 going to go back and talk to Ron or what?

13:41:44 9 A. Yeah. He was going to go talk to him and
10 see what he could do, but he didn't give me very
11 high hopes that he would change his mind.

13:41:55 12 Q. All right. At the time that you called
13 Mr. Walsh, did you know what you would do with the
14 19 motorcycles if you obtained them?

13:42:06 15 A. Yeah. We were going to try to wholesale
16 them to another dealer.

13:42:09 17 Q. Okay. Did you know which one at that
18 point?

13:42:13 19 A. No. That was still in the works.

13:42:16 20 Q. Had there been any discussion about --
21 well, strike that.

13:42:22 22 Was Renegade Harley-Davidson in existence
23 at that time?

13:42:25 24 A. No.

13:42:26 25 Q. All right.

13:42:31 1 MR. CONTINI: Answer the question that he
2 asks.

13:42:32 3 A. I know -- I believe that it was Fort
4 Lauderdale that was interested in the motorcycles.

13:42:35 5 BY MR. BERKOWITZ

13:42:35 6 Q. All right. Had you had any discussion
7 with the Fort Lauderdale Harley-Davidson about
8 possibly moving the bikes to them?

13:42:40 9 A. Yes.

13:42:41 10 Q. And who did you have a discussion with?

13:42:44 11 A. Not me personally had the discussion,
12 but --

13:42:46 13 Q. Okay. Did Diane?

13:42:47 14 A. No. It was Gus and Slim. They were our
15 sale -- they were our so-called sales department.

13:42:53 16 Q. All right. And were they interested in
17 getting the bikes down from Boston Harley and then
18 moving them over to Fort Lauderdale Harley?

13:43:02 19 MR. REHNQUIST: Object --

13:43:02 20 A. Yes.

13:43:02 21 MR. REHNQUIST: -- to the form. Object to
22 the form.

13:43:03 23 BY MR. BERKOWITZ

13:43:03 24 Q. And was that what they told you?

13:43:05 25 A. Yes. That's -- that's exactly why we were

1 getting the motorcycles, so they could be wholesaled
2 to another dealer, which Fort Lauderdale needed the
3 motorcycles.

13:43:15 4 Q. Now, do you have an understanding as to
5 whether either Ron Buchbaum or Sean Walsh knew that?

13:43:22 6 A. Yes. They knew it. They knew that we
7 were going to wholesale the bikes.

13:43:25 8 Q. How did they know it?

13:43:26 9 A. Because there were conversations with
10 Slim, Gus, myself, you know, with them that -- you
11 know, we explained to them that it was of the
12 essence because we already had like a \$25,000
13 deposit put down from Fort Lauderdale and we needed
14 to get the bikes.

13:43:42 15 Q. Did you tell Sean that you had a \$25,000
16 deposit from Fort Lauderdale Harley-Davidson for the
17 bikes?

13:43:51 18 A. I don't remember if I told him that or not
19 but he knew about the -- the money. I mean, I don't
20 know if I directly told him it was for Fort
21 Lauderdale because that would be, you know -- but he
22 knew that I had the deposit on the bikes for a
23 wholesale dealer, not necessarily Fort Lauderdale,
24 because that would be like, you know --

13:44:08 25 Q. Did you tell him that you had another

1 dealer that had given you a deposit for the bikes?

13:44:14 2 A. Yeah. Absolutely.

13:44:15 3 Q. All right.

13:44:15 4 A. We told him we had a couple different
5 ones.

13:44:22 6 Q. All right. Do you recall anything else
7 from your first conversation with Sean other than
8 what you've already told us?

13:44:38 9 A. No.

13:44:40 10 Q. All right.

13:44:40 11 A. I'm trying to think.

13:44:42 12 Q. Tell us as best you can remember what was
13 the next thing that happened in connection with
14 these 19 motorcycles?

13:44:49 15 A. Well, Ron Buchbaum -- Gus or Slim, one of
16 the two, I can't remember which one it was, spoke
17 with him and told one of them -- and I believe it
18 was Gus, okay -- that if he didn't have the package
19 or the money by that Saturday, that he was going to
20 sell the bikes off the floor to other people; in
21 other words, he was putting a time limit on it so we
22 had to have the cashier checks to him. If we
23 didn't, he was going to sell the bikes, so ...

13:45:22 24 Q. All right. Now, is this information that
25 you got directly --

1 saved it and they said the deal was on again.

13:50:00 2 Q. Okay. Do you remember anything more
3 specifically about what they told you?

13:50:03 4 A. No.

13:50:03 5 Q. Did you get in -- did you get involved
6 again at some point?

13:50:08 7 A. Yeah, when the -- when the paperwork came
8 and the titling part.

13:50:20 9 Q. From your conversation with Mr. Buchbaum,
10 did you have an understanding as to whether he
11 wanted you to simply plug in names as fictitious
12 buyers for the 19 motorcycles?

13:50:38 13 MR. REHNQUIST: Object to the form.

13:50:38 14 A. Right. He told us to use family, friends,
15 whatever. It didn't matter. Just -- you know, they
16 just needed 19 names.

13:50:45 17 BY MR. BERKOWITZ

13:50:46 18 Q. Did -- in your conversation with
19 Mr. Buchbaum, did you have -- did you mention at all
20 the fact that the motorcycles were going to go to
21 another dealer?

13:50:57 22 A. Yeah. I told him that we had a deposit
23 from another dealer. He knew they were being
24 wholesaled. That was the whole point of the whole
25 deal.

14:02:04 1 Q. And to your knowledge did any of those
2 people provide any funds for the purchase of any of
3 these motorcycles to DCI?

14:02:13 4 A. Yes.

14:02:14 5 Q. Yes, they did?

14:02:15 6 A. No, I'm sorry. Say that again.

14:02:17 7 Q. Did any of the 19 people that are
8 identified as these fictitious customers, did they
9 provide any money to DCI for any of these bikes?

14:02:30 10 A. No, they did not. This was all DC
11 International's money.

14:02:36 12 Q. Okay. And this was -- these funds were
13 coming out of DC International's bank account at
14 Northern Trust Bank of Florida, is that correct?

14:02:44 15 A. That's correct.

14:02:45 16 MR. REHNQUIST: Objection. Leading.

14:03:00 17 (Conferring with counsel.)

14:03:05 18 MR. CONTINI: I apologize, gentlemen, for
19 the interruptions on my behalf before.

14:03:11 20 BY MR. BERKOWITZ

14:03:12 21 Q. The -- the date of the checks, of all of
22 the checks, is July 28, 2003; do you see that?

14:03:20 23 A. Yes.

14:03:24 24 Q. That's on Exhibit 4, correct?

14:03:26 25 A. Yes.

14:57:39 1 MR. CONTINI: Yeah.

14:57:39 2 BY MR. BERKOWITZ

14:57:40 3 Q. Okay. Directing your attention to Page 46
4 and the sentence that begins "The records," "The
5 records reflect that DC Imports applied for" -- and
6 then we're missing a word -- "in the name of 19
7 individuals who are friends or family of Mrs. Cooke
8 to make the purchases look like individual retail"
9 and then we have SA, but not the rest of the word.
10 "This was done to circumvent Harley-Davidson policy
11 prohibiting dealer to dealer sales." Do you see
12 that?

14:58:15 13 A. Yes.

14:58:15 14 Q. Okay. And is it true that what you've
15 testified to in connection with these 19 motorcycles
16 that were purchased by DCI, that the identification
17 of 19 individuals as fictitious purchasers was, in
18 fact, done to circumvent the Harley-Davidson policy
19 prohibiting dealer-to-dealer sales?

14:58:38 20 MR. REHNQUIST: Objection.

14:58:39 21 A. Absolutely.

14:58:39 22 BY MR. BERKOWITZ

14:58:40 23 Q. All right. And whose idea was that?

14:58:43 24 A. Ron Buchbaum of Boston Harley-Davidson.

14:58:47 25 Q. And is that something that you told the

1 purchaser took title to his or her motorcycle in his
2 or her own name, as reflected on the certificates of
3 origin in each deal jacket." Do you see that
4 sentence?

15:47:58 5 A. Yes, I do.

15:47:59 6 Q. Is that sentence true?

15:48:00 7 A. No.

15:48:00 8 Q. In fact, DCI purchased all of the 19
9 motorcycles, is that correct?

15:48:04 10 A. Yes, we did.

15:48:06 11 MR. REHNQUIST: Objection.

15:48:06 12 BY MR. BERKOWITZ

15:48:06 13 Q. And Boston Harley-Davidson was aware of
14 that, is that correct?

15:48:10 15 MR. REHNQUIST: Objection, leading.

15:48:11 16 A. Boston Harley-Davidson instructed us to do
17 it that way.

15:48:14 18 BY MR. BERKOWITZ

15:48:19 19 Q. The last sentence of Paragraph 6 states,
20 quote, on paper and as far as anyone at Cycle-Craft
21 knew or could have known, these were sales to
22 individual purchasers in compliance with all
23 Harley-Davidson policies, end quote. Do you see
24 that statement?

15:48:34 25 A. Yes, I do.

1 to his or her motorcycle in his or own -- her own
2 individual name?

15:52:23 3 A. That's not true.

15:52:33 4 Q. The last sentence in this paragraph prior
5 to the citation to the McGrath declaration states,
6 and I quote, each of these units was properly set
7 up, inspected, and sold at the dealership. Do you
8 see that statement?

15:52:49 9 A. Yes.

15:52:51 10 Q. Were these units sold at the Boston
11 Harley-Davidson dealership?

15:52:55 12 MR. REHNQUIST: Objection. Form.

15:52:57 13 A. They were not sold to the individuals at
14 that dealership.

15:53:02 15 BY MR. BERKOWITZ

15:53:02 16 Q. As you testified earlier, you contracted
17 with a carrier to go up and pick up the --

15:53:08 18 A. Nineteen.

15:53:08 19 Q. -- the 19 motorcycles and deliver them
20 back to the purchaser, which was DCI, is that
21 correct?

15:53:15 22 MR. REHNQUIST: Objection. Leading.

23 Form.

15:53:17 24 A. That is correct.

25